

AN ACT

relating to measures to prevent wrongful convictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.023 and 2.32 to read as follows:

Art. 2.023. TRACKING USE OF CERTAIN TESTIMONY. (a) In this article:

(1) "Attorney representing the state" means a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) An attorney representing the state shall track:

(1) the use of testimony of a person to whom a defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, if known by the attorney representing the state, regardless of whether the testimony is presented at trial; and

(2) any benefits offered or provided to a person in exchange for testimony described by Subdivision (1).

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) In this article:

(1) "Electronic recording" means an audiovisual

1 electronic recording, or an audio recording if an audiovisual  
2 electronic recording is unavailable, that is authentic, accurate,  
3 and unaltered.

4 (2) "Law enforcement agency" means an agency of the  
5 state, or of a county, municipality, or other political subdivision  
6 of this state, that employs peace officers who, in the routine  
7 performance of the officers' duties, conduct custodial  
8 interrogations of persons suspected of committing criminal  
9 offenses.

10 (3) "Place of detention" means a police station or  
11 other building that is a place of operation for a law enforcement  
12 agency, including a municipal police department or county sheriff's  
13 department, and is owned or operated by the law enforcement agency  
14 for the purpose of detaining persons in connection with the  
15 suspected violation of a penal law. The term does not include a  
16 courthouse.

17 (b) Unless good cause exists that makes electronic  
18 recording infeasible, a law enforcement agency shall make a  
19 complete and contemporaneous electronic recording of any custodial  
20 interrogation that occurs in a place of detention and is of a person  
21 suspected of committing or charged with the commission of an  
22 offense under:

- 23 (1) Section 19.02, Penal Code (murder);  
24 (2) Section 19.03, Penal Code (capital murder);  
25 (3) Section 20.03, Penal Code (kidnapping);  
26 (4) Section 20.04, Penal Code (aggravated  
27 kidnapping);

1           (5) Section 20A.02, Penal Code (trafficking of  
2 persons);

3           (6) Section 20A.03, Penal Code (continuous  
4 trafficking of persons);

5           (7) Section 21.02, Penal Code (continuous sexual abuse  
6 of young child or children);

7           (8) Section 21.11, Penal Code (indecenty with a  
8 child);

9           (9) Section 21.12, Penal Code (improper relationship  
10 between educator and student);

11           (10) Section 22.011, Penal Code (sexual assault);

12           (11) Section 22.021, Penal Code (aggravated sexual  
13 assault); or

14           (12) Section 43.25, Penal Code (sexual performance by  
15 a child).

16           (c) For purposes of Subsection (b), an electronic recording  
17 of a custodial interrogation is complete only if the recording:

18           (1) begins at or before the time the person being  
19 interrogated enters the area of the place of detention in which the  
20 custodial interrogation will take place or receives a warning  
21 described by Section 2(a), Article 38.22, whichever is earlier; and

22           (2) continues until the time the interrogation ceases.

23           (d) For purposes of Subsection (b), good cause that makes  
24 electronic recording infeasible includes the following:

25           (1) the person being interrogated refused to respond  
26 or cooperate in a custodial interrogation at which an electronic  
27 recording was being made, provided that:

1                   (A) a contemporaneous recording of the refusal  
2 was made; or

3                   (B) the peace officer or agent of the law  
4 enforcement agency conducting the interrogation attempted, in good  
5 faith, to record the person's refusal but the person was unwilling  
6 to have the refusal recorded, and the peace officer or agent  
7 contemporaneously, in writing, documented the refusal;

8                   (2) the statement was not made as the result of a  
9 custodial interrogation, including a statement that was made  
10 spontaneously by the accused and not in response to a question by a  
11 peace officer;

12                   (3) the peace officer or agent of the law enforcement  
13 agency conducting the interrogation attempted, in good faith, to  
14 record the interrogation but the recording equipment did not  
15 function, the officer or agent inadvertently operated the equipment  
16 incorrectly, or the equipment malfunctioned or stopped operating  
17 without the knowledge of the officer or agent;

18                   (4) exigent public safety concerns prevented or  
19 rendered infeasible the making of an electronic recording of the  
20 statement; or

21                   (5) the peace officer or agent of the law enforcement  
22 agency conducting the interrogation reasonably believed at the time  
23 the interrogation commenced that the person being interrogated was  
24 not taken into custody for or being interrogated concerning the  
25 commission of an offense listed in Subsection (b).

26                   (e) A recording of a custodial interrogation that complies  
27 with this article is exempt from public disclosure as provided by

1 Section 552.108, Government Code.

2 SECTION 2. Chapter 2, Code of Criminal Procedure, is  
3 amended by adding Article 2.1386 to read as follows:

4 Art. 2.1386. EYEWITNESS IDENTIFICATION PROTOCOLS. (a) In  
5 this article, "law enforcement agency" means an agency of the state  
6 or an agency of a political subdivision of the state authorized by  
7 law to employ peace officers.

8 (b) The Texas Commission on Law Enforcement shall establish  
9 a comprehensive education and training program on eyewitness  
10 identification, including material regarding variables that affect  
11 a witness's vision and memory, practices for minimizing  
12 contamination, and effective eyewitness identification protocols.

13 (c) Each law enforcement agency shall require each peace  
14 officer who is employed by the agency and who performs eyewitness  
15 identification procedures to complete the education and training  
16 described by Subsection (b).

17 SECTION 3. Article 38.075, Code of Criminal Procedure, is  
18 amended by adding Subsection (c) to read as follows:

19 (c) Evidence of a prior offense committed by a person who  
20 gives testimony described by Subsection (a) may be admitted for the  
21 purpose of impeachment if the person received a benefit described  
22 by Article 39.14(h-1)(2) with respect to the offense, regardless of  
23 whether the person was convicted of the offense.

24 SECTION 4. Section 3, Article 38.20, Code of Criminal  
25 Procedure, is amended by amending Subsection (c) and adding  
26 Subsection (d) to read as follows:

27 (c) The model policy or any other policy adopted by a law

1 enforcement agency under Subsection (a) must:

2 (1) be based on:

3 (A) credible field, academic, or laboratory  
4 research on eyewitness memory;

5 (B) relevant policies, guidelines, and best  
6 practices designed to reduce erroneous eyewitness identifications  
7 and to enhance the reliability and objectivity of eyewitness  
8 identifications; and

9 (C) other relevant information as appropriate;  
10 and

11 (2) include ~~[address]~~ the following information  
12 regarding evidence-based practices ~~[topics]~~:

13 (A) procedures for selecting ~~[the selection of]~~  
14 photograph and live lineup filler photographs or participants to  
15 ensure that the photographs or participants:

16 (i) are consistent in appearance with the  
17 description of the alleged perpetrator; and

18 (ii) do not make the suspect noticeably  
19 stand out;

20 (B) instructions given to a witness before  
21 conducting a photograph or live lineup identification procedure  
22 that must include a statement that the person who committed the  
23 offense may or may not be present in the procedure;

24 (C) procedures for documenting and preserving  
25 the ~~[documentation and preservation of]~~ results of a photograph or  
26 live lineup identification procedure, including the documentation  
27 of witness statements, regardless of the outcome of the procedure;

1 (D) procedures for administering a photograph or  
2 live lineup identification procedure to an illiterate person or a  
3 person with limited English language proficiency;

4 (E) for a live lineup identification procedure,  
5 if practicable, procedures for assigning an administrator who is  
6 unaware of which member of the live lineup is the suspect in the  
7 case or alternative procedures designed to prevent opportunities to  
8 influence the witness;

9 (F) for a photograph identification procedure,  
10 procedures for assigning an administrator who is capable of  
11 administering a photograph array in a blind manner or in a manner  
12 consistent with other proven or supported best practices designed  
13 to prevent opportunities to influence the witness; and

14 (G) any other procedures or best practices  
15 supported by credible research or commonly accepted as a means to  
16 reduce erroneous eyewitness identifications and to enhance the  
17 objectivity and reliability of eyewitness identifications.

18 (d) A witness who makes an identification based on a  
19 photograph or live lineup identification procedure shall be asked  
20 immediately after the procedure to state, in the witness's own  
21 words, how confident the witness is in making the identification. A  
22 law enforcement agency shall document in accordance with Subsection  
23 (c)(2)(C) any statement made under this subsection.

24 SECTION 5. Section 5, Article 38.20, Code of Criminal  
25 Procedure, is amended to read as follows:

26 Sec. 5. (a) Any evidence or expert testimony presented by  
27 the state or the defendant on the subject of eyewitness

1 identification is admissible only subject to compliance with the  
2 Texas Rules of Evidence. Except as provided by Subsection (c),  
3 evidence [~~Evidence~~] of compliance with the model policy or any  
4 other policy adopted under this article [~~or with the minimum~~  
5 ~~requirements of this article~~] is not a condition precedent to the  
6 admissibility of an out-of-court eyewitness identification.

7 (b) Notwithstanding Article 38.23 as that article relates  
8 to a violation of a state statute and except as provided by  
9 Subsection (c), a failure to conduct a photograph or live lineup  
10 identification procedure in substantial compliance with the model  
11 policy or any other policy adopted under this article [~~or with the~~  
12 ~~minimum requirements of this article~~] does not bar the admission of  
13 eyewitness identification testimony in the courts of this state.

14 (c) If a witness who has previously made an out-of-court  
15 photograph or live lineup identification of the accused makes an  
16 in-court identification of the accused, the eyewitness  
17 identification is admissible into evidence against the accused only  
18 if the evidence is accompanied by the details of each prior  
19 photograph or live lineup identification made of the accused by the  
20 witness, including the manner in which the identification procedure  
21 was conducted.

22 SECTION 6. Article 38.22, Code of Criminal Procedure, is  
23 amended by adding Section 9 to read as follows:

24 Sec. 9. Notwithstanding any other provision of this  
25 article, no oral, sign language, or written statement that is made  
26 by a person accused of an offense listed in Article 2.32(b) and made  
27 as a result of a custodial interrogation occurring in a place of

1 detention, as that term is defined by Article 2.32, is admissible  
2 against the accused in a criminal proceeding unless:

3 (1) an electronic recording was made of the statement,  
4 as required by Article 2.32(b); or

5 (2) the attorney representing the state offers proof  
6 satisfactory to the court that good cause, as described by Article  
7 2.32(d), existed that made electronic recording of the custodial  
8 interrogation infeasible.

9 SECTION 7. Article 39.14, Code of Criminal Procedure, is  
10 amended by adding Subsection (h-1) to read as follows:

11 (h-1) In this subsection, "correctional facility" has the  
12 meaning assigned by Section 1.07, Penal Code. Notwithstanding any  
13 other provision of this article, if the state intends to use at a  
14 defendant's trial testimony of a person to whom the defendant made a  
15 statement against the defendant's interest while the person was  
16 imprisoned or confined in the same correctional facility as the  
17 defendant, the state shall disclose to the defendant any  
18 information in the possession, custody, or control of the state  
19 that is relevant to the person's credibility, including:

20 (1) the person's complete criminal history, including  
21 any charges that were dismissed or reduced as part of a plea  
22 bargain;

23 (2) any grant, promise, or offer of immunity from  
24 prosecution, reduction of sentence, or other leniency or special  
25 treatment, given by the state in exchange for the person's  
26 testimony; and

27 (3) information concerning other criminal cases in

1 which the person has testified, or offered to testify, against a  
2 defendant with whom the person was imprisoned or confined,  
3 including any grant, promise, or offer as described by Subdivision  
4 (2) given by the state in exchange for the testimony.

5 SECTION 8. STUDY REGARDING USE OF DRUG FIELD TEST KITS. (a)  
6 The Texas Forensic Science Commission shall conduct a study  
7 regarding the use of drug field test kits by law enforcement  
8 agencies in this state. The commission shall:

9 (1) evaluate the quality, accuracy, and reliability of  
10 drug field test kits;

11 (2) identify any common problems with drug field test  
12 kits;

13 (3) evaluate the availability and adequacy of training  
14 for law enforcement officers regarding the use of drug field test  
15 kits and the interpretation of the test results; and

16 (4) develop legislative recommendations regarding the  
17 use of drug field test kits by law enforcement agencies and  
18 regarding related training for law enforcement officers.

19 (b) Not later than December 1, 2018, the Texas Forensic  
20 Science Commission shall submit to the governor, the lieutenant  
21 governor, and each member of the legislature a written report that  
22 summarizes the results of the study conducted under this section  
23 and includes any legislative recommendations.

24 SECTION 9. CRIME SCENE INVESTIGATION STUDY. (a) The Texas  
25 Forensic Science Commission shall conduct a study regarding the  
26 manner in which crime scene investigations are conducted in this  
27 state. The commission shall:

1           (1) evaluate the standard procedures used in  
2 processing a crime scene and evaluate the quality of crime scene  
3 investigations;

4           (2) evaluate the availability and adequacy of the  
5 training or continuing education provided to crime scene  
6 investigators; and

7           (3) develop legislative recommendations regarding  
8 improvements to crime scene investigation procedures and training.

9           (b) Not later than December 1, 2018, the Texas Forensic  
10 Science Commission shall submit to the governor, the lieutenant  
11 governor, and each member of the legislature a written report that  
12 summarizes the results of the study conducted under this section  
13 and includes any legislative recommendations.

14           SECTION 10. Not later than January 1, 2018, the Texas  
15 Commission on Law Enforcement shall adopt the comprehensive  
16 education and training program required by Article 2.1386, Code of  
17 Criminal Procedure, as added by this Act.

18           SECTION 11. Article 2.32 and Section 9, Article 38.22, Code  
19 of Criminal Procedure, as added by this Act, apply to the use of a  
20 statement resulting from a custodial interrogation that occurs on  
21 or after March 1, 2018, regardless of whether the criminal offense  
22 giving rise to that interrogation is committed before, on, or after  
23 that date.

24           SECTION 12. Article 38.075(c), Code of Criminal Procedure,  
25 as added by this Act, applies to the admissibility of evidence in a  
26 criminal proceeding that commences on or after the effective date  
27 of this Act. The admissibility of evidence in a criminal proceeding

1 that commences before the effective date of this Act is governed by  
2 the law in effect on the date the proceeding commenced, and the  
3 former law is continued in effect for that purpose.

4 SECTION 13. (a) Section 3(d), Article 38.20, Code of  
5 Criminal Procedure, as added by this Act, applies only to a  
6 photograph or live lineup identification procedure conducted on or  
7 after the effective date of this Act, regardless of whether the  
8 offense to which the procedure is related was committed before, on,  
9 or after the effective date of this Act.

10 (b) Section 5, Article 38.20, Code of Criminal Procedure, as  
11 amended by this Act, applies only to the trial of an offense with  
12 respect to which a prior photograph or live lineup identification  
13 of the accused occurred on or after the effective date of this Act,  
14 regardless of whether the offense that is the subject of the trial  
15 was committed before, on, or after the effective date of this Act.

16 SECTION 14. Article 39.14(h-1), Code of Criminal Procedure,  
17 as added by this Act, applies to the prosecution of an offense  
18 committed on or after the effective date of this Act. The  
19 prosecution of an offense committed before the effective date of  
20 this Act is governed by the law in effect on the date the offense was  
21 committed, and the former law is continued in effect for that  
22 purpose. For purposes of this section, an offense is committed  
23 before the effective date of this Act if any element of the offense  
24 occurs before the effective date.

25 SECTION 15. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 34 was passed by the House on May 2, 2017, by the following vote: Yeas 140, Nays 3, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 34 on May 26, 2017, by the following vote: Yeas 140, Nays 3, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 34 was passed by the Senate, with amendments, on May 23, 2017, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor